

VIRGINIA CODE
OF 1924

ANNOTATED

Sec. 4360 to 6571i

APPENDIX

Case 3:19-cv-00692-REP Document 19-16 Filed 10/16/19 Page 2 of 3 PageID# 12

THE CODE OF VIRGINIA

as Amended to Adjournment of
General Assembly 1924

Together with all other General Acts in force July 1st, 1924

WITH

The Declaration of Independence
The Constitution of the United States
The Constitution of Virginia
The Tax Bill

COMPLETE ANNOTATIONS

Compiled and Annotated by the Editorial Staff of The Michie Company
under the supervision of Thomas Johnson Michie

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1924

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case the judgment of the court below be wholly affirmed by the Supreme Court of Appeals the said court in affirming shall also give judgment in behalf of the Commonwealth against the plaintiff in error for the amount of the said costs to be taxed by its clerk. (Code 1887, § 4059; 1895-6, p. 102.)

See notes to §§ 3486, 6356, 4964, 6363, 6372.

"Prior to its enactment (Act 1920, p. 416, allowing appeals as of right in criminal cases § 6348 of this Code every person convicted of a crime had the right to require each member of the court of appeals in vacation, and in case of adverse action by all of them, the whole court in session, to consider and pass upon his ex parte petition for a writ of error, and the writ was always granted if any single member of the court had substantial doubt as to the correctness of the conviction and judgment of the lower court. Nothing more was needed for the protection of every person convicted of crime, while the cost of printing the record and of following the case through a hopeless appeal was saved to the applicant if his case was without substantial merit, and a large amount likewise saved to the State in criminal expenses, since under Code § 4938, many of the records on appeal will be printed at the expense of the State." Leading Article, 7 Va. Law Reg., N. S., 562.

Cited in Chase v. Miller, 88 Va. 791, 797, 14 S. E. 545.

§ 4939. How judgment of appellate court certified and entered.—The judgment of the Supreme Court of Appeals shall be certified to the court to whose judgment the writ of error was allowed, which court, or the clerk thereof in vacation, shall cause the same to be entered on its order book as its own judgment. (Code 1887, § 4060; 1902-3-4, p. 628.)

As to certificate of judgment to trial court, see also § 6339.

In Reed v. Com. 98 Va. 817, 819, 36 S. E. 399, the court held that the provisions of this section requiring the judgment of the Appellate Court to be certified to the trial court and entered by the latter as its judgment is substantially complied with by simply transcribing the judgment of the appellate court on the book of the trial court.

§ 4940. Execution of judgment in cases of felony.—Sentence of death, except for insurrection or rebellion, shall not be executed sooner than thirty days after the sentence is pronounced. (Code 1887, § 4061.)

For other sections relating to the execution of death sentence, see §§ 4949-4947. For full treatment of execution sentence, see Sentence and Punishment 5 Cum. Dig. 730, 731; 12 Enc. Dig. 143 et seq.

If the statute makes no provision with regard to the matter, the sheriff or executioner must fix the time as at common law. State v. Haddox, 50 W. Va. 222, 224, 40 S. E. 387.

The West Virginia statute. Barnes Code, ch. 160, § 8, is identical with this section.

In the absence of a statutory provision authorizing this court to fix the time of execution, it would be a usurpation of ministerial power not conferred on the court by common statute or constitutional law, to do so, State v. Haddox, 50 W. Va. 222, 40 S. E. 387.

The fixing of the time and place of execution is no part of the judgment or sentence of death. It is purely a ministerial and not a judicial act to carry into execution the judgment. State v. Haddox, 50 W. Va. 222, 224, 40 S. E. 387.

§ 4941. Death chamber; who to execute death sentence.—The Superintendent of the State Penitentiary, at Richmond, is hereby authorized and directed to provide and maintain a permanent death chamber within the confines of said penitentiary, and which said death chamber shall have all the necessary appliances for the proper execution of felons by electrocution. In said death chamber shall be executed all felons upon whom the death penalty has been imposed, for offenses committed on or after June twenty-sixth,

nineteen hundred and eight. Each execution shall be conducted by the said superintendent or some assistant or assistants designated by him. (1908, p. 684.) ☒

For case holding death by electrocution not a cruel and unusual form of punishment, see notes of Hart v. Com., 131 Va. 726, 109 S. E. 582, under Va. Const. § 9.

As to effect, under the former statute, of failure of the judgment to appoint executioner of death sentence, See Russell v. Com., 78 Va. 400, 405.

§ 4942. Transfer of convict to penitentiary; how death sentence executed; who to be present.

—The clerk of the court in which is pronounced the sentence of death against any felon shall, as soon as may be, after such sentence, deliver a certified copy thereof to the Superintendent of the Penitentiary at Richmond. Not more than thirty nor less than fifteen days before the time fixed, in the judgment of the court, for the execution of said sentence, the Superintendent of the Penitentiary shall cause to be conveyed to the said penitentiary such condemned felon in the manner now prescribed by law for the conveyance of felons sentenced to confinement in the penitentiary, and the superintendent, in his discretion, may appoint more than one guard to convey the condemned felon, and the expenses of such guard or guards shall be paid in the manner and under the requirements now prescribed by law for the conveyance of convicts to the penitentiary. The said superintendent, or the assistants appointed by him, shall, at the time named in said sentence, cause the said felon under sentence of death to be electrocuted until he is dead, unless a suspension of execution be ordered. At the execution there shall be present the superintendent, or an assistant, the surgeon of the penitentiary or his assistant, and a number of respectable citizens numbering not less than six nor more than twelve. The counsel for the convict and a minister of the gospel may be present. (Code 1887, § 4063; 1908, p. 684; 1910, p. 571.)

§ 4063, Code 1887, is quoted in an article on the death penalty, as prohibiting such sentence from being executed in a public manner. Leading Article, 11 Va. Law Reg. 638.

§ 4943. Certificate of the execution of death sentence.—The superintendent shall certify the fact of the execution of the condemned felon to the clerk of the court by which such sentence was pronounced, who shall file such certificate with the papers of the case and enter the same upon the records of the case. (Code 1887, § 4064; 1908, p. 684.)

§ 4943a. New day for execution.—Whenever, for an offense hereafter committed, the day fixed for the execution of a sentence of death shall have passed without the execution of such sentence and it shall have become necessary to fix a new date therefor, it shall be the duty of the court which pronounced such sentence to fix another day for such execution. The person to be executed need not be present when such other day is fixed, but a copy of the order fixing the new date of execution shall be promptly furnished by the clerk of the court making the order to the officer in whose custody the person to be executed is, and said officer shall deliver a copy of said order to the person to be executed,